

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Presubscribed Interexchange Carrier Charges

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CC Docket No. 02-53

FEB 17 2005

REPORT AND ORDER

Adopted: February 10, 2005

Released: February 17, 2005

By the Commission: Chairman Powell issuing a statement; Commissioner Adelstein concurring and issuing a statement; Commissioner Copps approving in part, dissenting in part, and issuing a statement.

I. INTRODUCTION

1. Presubscribed interexchange carrier (PIC) change charges are federally tariffed charges imposed by local exchange carriers (LECs) on end user subscribers when these subscribers change their presubscribed interexchange carriers (IXCs). For incumbent LECs, these charges currently are subject to a \$5 safe harbor within which a PIC change charge is considered reasonable.¹ Significant industry and market changes have occurred since the implementation of the \$5 safe harbor in 1984; therefore, the Commission initiated this proceeding to reexamine the existing safe harbor for incumbent LEC PIC change charges.² Based on the record in this proceeding, we require incumbent LECs to adopt separate PIC change charges for changes that are processed electronically and manually.³ We adopt a safe harbor of \$1.25 for electronically processed PIC changes, and a safe harbor of \$5.50 for manually processed PIC changes.⁴

¹ *Annual 1985 Access Tariff Filings*, CC Docket No. 86-125, Memorandum Opinion and Order, 2 FCC Rcd 1416, 1445-46, paras. 272-74 (1987) (*1987 Access Tariff Order*). A carrier may establish that a higher PIC change charge is warranted by providing the Commission with appropriate cost support data. *Id.*

² *Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, CCB/CPD File No. 01-12, RM-10131, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002) (*Notice*).

³ Competitive LECs also may impose PIC change charges on their end user customers. The PIC change charge requirements we adopt in this Report and Order apply only to incumbent LECs. At the current time we rely on market forces to constrain competitive LEC PIC change charges. Should market forces fail to constrain competitive LEC PIC change charge rates in the future, we might at that time consider applying our PIC change charge requirements to competitive LECs as well as to incumbent LECs. *See, e.g., Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9936, para. 34 (2001) (the Commission found it necessary to regulate competitive LEC access rates when the market failed to constrain these rates).

⁴ Carriers that have filed cost information demonstrating costs below these safe harbors must adjust their PIC change charges based on their actual costs and cannot avail themselves of the safe harbors.

II. BACKGROUND

2. In its proceeding investigating the LECs' initial 1983 interstate access tariff filings, the Commission concluded both that it was reasonable for carriers to recover costs associated with changing an end user's presubscribed IXC, and that it was difficult to establish the exact costs incurred by incumbent LECs for this service.⁵ In light of these findings, the Commission established a safe harbor for PIC change charges. PIC change charges of \$5 would be considered reasonable.⁶ When the Commission next addressed the PIC change charge in 1987, it found that carriers had not submitted sufficient cost support to justify increasing the charge. The Commission required all carriers "to continue to apply a fixed rate of \$5.00 per presubscription change."⁷

3. On May 16, 2001, CompTel petitioned the Commission to initiate a rulemaking proceeding to revise its policies governing the PIC change charge.⁸ CompTel's petition was based largely on a Commission decision on a formal complaint concerning such charges.⁹ In the *MCI Order*, the Commission found that, although PIC change costs had fallen, a complaint proceeding was not the proper venue for altering existing rules governing the reasonableness of the \$5 safe harbor.¹⁰ In response to CompTel's petition, the Commission concluded that significant industry and market changes had occurred since the implementation of the safe harbor in 1984, and that it was therefore appropriate for the Commission to initiate a rulemaking proceeding to reexamine the existing safe harbor for incumbent LEC PIC change charges.¹¹ Comments on the *Notice* were due by June 14, 2002, and reply comments by July 1, 2002.¹² On April 23, 2004, the Commission released a further notice of proposed rulemaking seeking comment on PIC change cost data filed by BellSouth in support of an increase in its federally tariffed rate from \$1.49 to \$3.07.¹³ Comments on the *Further Notice* were due by June 14, 2004, and reply comments by June 25, 2004.¹⁴ Verizon filed detailed cost information during the pleading cycle of the *Further Notice*.¹⁵ SBC filed cost information four months after the pleading cycle closed, on November 4, 2004.¹⁶

⁵ *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422, App. B at 13-5 (Apr. 27, 1984) (*1984 Access Tariff Order*); *1987 Access Tariff Order*, 2 FCC Rcd at 1446, para. 274.

⁶ *1984 Access Tariff Order*, App. B at 13-5.

⁷ *1987 Access Tariff Order*, 2 FCC Rcd at 1446, para. 274.

⁸ Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Competitive Telecommunications Association Petition for Rulemaking, CCB/CPD File No. 01-12, RM-10131 (filed May 16, 2001).

⁹ *MCI Telecommunications Corp. v. U S WEST Communications, Inc.*, File Nos. E-97-08, E-97-20 through 24, Memorandum Opinion and Order, 15 FCC Rcd 9328 (2000) (*MCI Order*).

¹⁰ See *MCI Order*, 15 FCC Rcd at 9329, para. 2.

¹¹ *Notice*, 17 FCC Rcd 5568.

¹² *Comments Sought on the Commission's Policies for Regulating Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, Public Notice, 17 FCC Rcd 8846 (Pric. Pol. Div. 2002). A list of commenting parties is included at Appendix A.

¹³ *Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445 (2004) (*Further Notice*).

¹⁴ *Further Comments Sought on the Commission's Policies for Regulating Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, Public Notice, DA 04-1586 (Pric. Pol. Div., May 28, 2004). A list of parties filing supplemental comments is included at Appendix A.

¹⁵ Verizon Supplemental Comments at Att. B.

III. DISCUSSION

4. As a threshold matter, we consider whether regulation of incumbent LEC PIC change charges is necessary at the current time. As discussed above, incumbent LECs assess PIC change charges on their end user customers that switch long distance service providers. In the *Notice*, the Commission sought comment on whether market forces could be relied upon to establish reasonable rates for incumbent LEC PIC change charges.¹⁷ Many commenters argue that market forces currently will not constrain incumbent LEC PIC change charge rates.¹⁸ Commenters argue that, at this time, most residential customers do not have a choice of LEC; therefore, end users cannot yet shop around among different LECs to find lower PIC change charge rates.¹⁹ Under the Commission's existing domestic common carrier regulations, incumbent LECs generally are treated as dominant carriers because the Commission has found that these carriers possess and are likely to be able to exercise market power.²⁰ According to the most recent report, as of December 2003 incumbent LECs provide local service to approximately 84 percent of end users.²¹ There are no competitive LECs providing service in more than 25 percent of the zip codes in the country.²² While we do believe that residential competition is growing, competition is not yet so ubiquitous to serve as a reliable constraint on PIC change charge rates. Thus, we find that, at this time, market forces cannot be relied upon to limit incumbent LEC PIC change charge rates.

A. PIC Change Charge Safe Harbors

5. Having determined that market forces are not yet sufficient to constrain incumbent LEC PIC change charge rates, we examine how costs related to PIC changes are incurred and how incumbent LECs may recover these costs through the PIC change charge. Some commenters argue that PIC change

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¹⁶ Letter from Davida Grant, Senior Counsel, SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-53 (Nov. 4, 2004) (SBC November 4 *Ex Parte* Letter).

¹⁷ *Notice*, 17 FCC Rcd at 5575, para. 14.

¹⁸ ASCENT Comments at 16; AT&T Comments at 2-3 n.5; NASUCA Comments at 6; WorldCom Comments at 2; Genesis Reply at 5.

¹⁹ AT&T Comments at 2-3 n.5; WorldCom Comments at 2-3.

²⁰ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337; Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22747-48, para. 5 (2001). For a discussion of how the Commission distinguishes between dominant and non-dominant carriers, see *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (*Competitive Carrier Notice*); First Report and Order, 85 FCC 2d 1 (1980) (*Competitive Carrier First Report and Order*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (Comm. Carr. Bur. 1983); Third Report and Order, 48 Fed. Reg. 46,791 (Comm. Carr. Bur. 1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Competitive Carrier Fourth Report and Order*), *vacated*, *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp. v. AT&T*, 509 U.S. 913 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated*, *MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier* proceeding).

²¹ *Local Telephone Competition: Status as of December 31, 2003*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis Division, Table 1 (June 2004) (*June 2004 Local Competition Report*).

²² *June 2004 Local Competition Report* at Table 14. Even in zip codes where competitive LECs are present, these competitive LECs may not offer service to customers in all areas covered by the zip codes, and may not offer service to all types of customers (i.e., to both residential and business customers).

charge rates should be based on each individual incumbent LEC's actual costs.²³ Other commenters urge us to establish a new safe harbor lower than the current \$5 safe harbor to reflect incumbent LECs' lower costs associated with PIC changes.²⁴ Incumbent LEC commenters argue that costs associated with PIC changes justify retention of the existing \$5 safe harbor.²⁵

6. We do not agree that we should require incumbent LECs to tariff PIC change charges based on individual incumbent LEC actual costs. Such a requirement would be unduly burdensome, both to the incumbent LECs that would now be required to compile and submit detailed cost information related to PIC changes, and to the Commission, which would have to expend scarce resources evaluating the multiple cost submissions. Instead, we find that adopting a safe harbor for the incumbent LEC PIC change charge has been a reasonable method of regulating the charge in the past, and use of this method continues to be a reasonable practice going forward. Under the safe harbor approach, incumbent LECs may tariff PIC change charge rates that are equal to or less than the safe harbor without having to provide detailed cost filings in support of the rates. Incumbent LECs are free, however, to submit cost showings if their costs exceed the safe harbor limit. We find that adoption of a safe harbor in this instance provides a reasonable proxy for incumbent LECs' PIC change costs, while allowing carriers the option of foregoing the submission of cost support if their rates are within the safe harbor limits.

7. As we discussed in the *Further Notice*, an examination of PIC change costs reveals a substantial difference between the costs of electronically processed PIC changes and PIC changes that require manual processing.²⁶ The record in this proceeding further confirms that the costs of an electronically processed PIC change are substantially lower than the costs of PIC changes that must be processed manually.²⁷ By allowing carriers to impose a single, blended PIC change charge, customers whose PIC changes are processed through the less costly electronic system are realizing no benefit from the use of these more efficient systems. They will be assessed the same charge as a customer whose PIC change is more complicated and requires costly manual processing. With no distinction in the rates between electronically processed and manually processed changes, IXCs lack an incentive to invest in the more efficient electronic systems, as there is no competitive benefit to doing so. Instead, we believe that both customers and IXCs should reap the benefit of the IXCs' investments in more efficient electronic processing capabilities. We therefore adopt separate safe harbors for incumbent LEC PIC changes that are processed manually and electronically. Adopting a two-tiered approach will provide an incentive for IXCs to invest in electronic processing capabilities to gain the competitive advantage of lower incumbent LEC PIC change charges for customers switching to these IXCs' services.

²³ AT&T Comments at 7-10; Genesis Reply at 1; AT&T Supplemental Comments at 2-3; AT&T Supplemental Reply at 4-5.

²⁴ ACUTA Comments at 3; ASCENT Comments at 1; Texas AG Comments at 1-2; Genesis Reply at 5; NASUCA Reply at 2; NASUCA Supplemental Comments at 2-5.

²⁵ Beacon Comments at 1-3; NTCA Comments at 2-3; SBC Comments at 11; Sprint Comments at 2; Verizon Comments at 2; NECA Supplemental Comments at 3-4.

²⁶ *Further Notice*, 19 FCC Rcd at 7446-47, paras. 3-4.

²⁷ See Letter from Jennette C. Fields, Tariff Administrator, BellSouth Telecommunications, Inc., to Secretary, Federal Communications Commission, F.C.C. Tariff No. 1 Transmittal No. 746, Description and Justification at 2-4, (filed Oct. 14, 2003) (BellSouth Transmittal No. 746); Letter from Jennette C. Fields, Tariff Administrator, BellSouth Telecommunications, Inc., to Secretary, Federal Communications Commission, F.C.C. Tariff No. 1 Transmittal No. 756, Att. A at 2, Row 23 Column F and Row 36 Column F (filed Nov. 4, 2003) (BellSouth Transmittal No. 756) (showing total weighted costs of \$2.45 for a manually processed PIC change and \$0.48 for an electronically processed PIC change); AT&T Supplemental Comments at 6-7; Verizon Supplemental Comments at Att. B, Ex. Verizon East PIC Cost Workpapers 1.2 and 1.3 Row 38 (loaded manual PIC change cost is \$6.25 and electronic is \$2.06 for Verizon East), Ex. Verizon West PIC Cost Workpapers 1.2 and 1.3 Row 29 (loaded manual PIC change cost is \$6.28 and electronic is \$1.86 for Verizon West).

8. Commenters opposing our proposal to adopt a two-tiered safe harbor claim that such a system will lead to customer confusion.²⁸ We note that the two safe harbor rates will be filed in incumbent LEC tariffs, just as is the current single PIC change charge. Customers will still be able to look to incumbent LEC tariffs to find the rate they will be assessed for a change. Furthermore, to the extent that IXCs will now be able to secure for potential customers lower PIC change charge rates if the changes are submitted electronically, we expect that IXCs will include this information in their marketing materials. We also reject ACUTA's request for a single safe harbor based solely on the costs of the less expensive electronic PIC change process.²⁹ There may be instances where electronic processing is not feasible, and incumbent LECs should still be able to recover the costs legitimately related to manual PIC changes.

9. Some commenters argue that, regardless of our decision on the PIC change charge applicable to large incumbent LECs, we should retain the \$5.00 safe harbor for small and rural incumbent LECs.³⁰ Commenters assert that these carriers have higher PIC change costs than larger LECs.³¹ We find that small and rural incumbent LECs should be subject to the same safe harbors for electronic and manual processing applicable to larger incumbent LECs. There is no evidence on the record that the costs for processing electronically submitted PIC changes are greater for small and rural incumbent LECs than for larger and non-rural incumbent LECs. Therefore we have no basis on which to establish a separate electronic PIC change safe harbor rate for these carriers. One carrier submitted cursory cost information regarding its costs to process manually submitted PIC changes, but this information from a single carrier was not sufficient evidence on which to base a separate small and rural incumbent LEC manual PIC change charge safe harbor.³² In any event, we note that, as discussed below, we are raising the current manual safe harbor rate for all incumbent LECs, including small and rural carriers. Finally, we note that prior to our decision in this report and order small and rural incumbent LECs have been subject to the same \$5.00 safe harbor applicable to all other incumbent LECs. No small or rural carrier has submitted cost information seeking to increase this \$5.00 charge. As has been the case since 1984, all carriers remain free to submit cost studies to justify a higher rate to the extent these companies' costs exceed the safe harbors.

10. We find that incumbent LECs without electronic PIC change capabilities may rely solely on a manual rate, subject to the manual safe harbor. We do not require any small or rural carrier to implement electronic PIC change processing systems if doing so would not be economically rational. To the extent small and rural incumbent LECs have electronic PIC change processing systems in place, we find that the separate electronic PIC change rate will provide an incentive for IXCs to use this less costly manner of PIC change submission. Customers selecting IXCs that employ electronic PIC change processing will be charged the incumbent LECs' tariffed lower electronic PIC change charge rates.

B. Costs Recovered in the PIC Change Charge

11. There is substantial discussion in the record as to the costs that should be recovered through the PIC change charge. In general, IXC and consumer group commenters argue that only the

²⁸ ACUTA Supplemental Comments at 2; Cincinnati Bell Supplemental Comments at 3; Sprint Supplemental Comments at 3; Verizon Supplemental Comments at 4.

²⁹ ACUTA Supplemental Comments at 2.

³⁰ Cincinnati Bell Comments at 5; NECA/OPASTCO Comments at 4.

³¹ HSTC Comments at 1, Att. A (HSTC claims that its average cost for a PIC change is \$23.65, with all changes done manually); NTCA Comments at 3-4; Sprint Comments at 14; Cincinnati Bell Supplemental Comments at 5.

³² HSTC Comments at Att. A.

incremental costs of switching carriers should be recovered through the PIC change charge.³³ Incumbent LECs, on the other hand, argue that they should recover costs beyond the incremental costs of changing carriers through the PIC change charge.³⁴ The incumbent LEC commenters argue that costs related to administering PIC freezes,³⁵ third-party verification (TPV) costs,³⁶ costs related to investigating slamming complaints, and a reasonable percentage of a carrier's total company common costs should be recovered through the PIC change charge.³⁷ For the reasons discussed below, we find that incumbent LECs should not recover PIC freeze or TPV costs through the PIC change charge.

12. PIC freeze services are optional services offered by LECs to their customers. If LECs choose to offer a PIC freeze service, they should recover the costs from those customers requesting and using the service. If LECs are allowed to recover the costs of PIC freezes through the PIC change charge, customers that pay the PIC change charge are paying for the PIC freeze service for other customers. As WorldCom points out in its comments, customers that do not subscribe to the PIC freeze service are more likely to change their long distance providers and to pay the PIC change charge.³⁸ It is unreasonable to require these customers to pay the costs of a PIC freeze service utilized by other customers. Therefore, we find that the costs associated with administering PIC freeze services cannot be recovered through the PIC change charge.

13. We also find that the costs of TPV cannot be recovered through the PIC change charge. LECs are not required to conduct TPV under our rules unless a customer is switching to the service of the LECs' long distance affiliates (or from a competitive LEC to the LECs themselves for local service).³⁹ To the extent TPV is used to verify a change to a LEC-affiliated carrier, LECs should not be allowed to recover these costs from customers switching to competing long distance providers. Instead, these costs should be recovered by the LEC from its affiliate. Similarly, LECs should not be allowed to increase the costs of PIC changes by including the costs of TPV processes that are voluntarily undertaken by the LECs. For example, Verizon's study demonstrates that TPV costs represent approximately 12 percent of its manual processing costs.⁴⁰ Allowing LECs to inflate the PIC change charge by recovering these

³³ ASCENT Comments at 1, 8; NASUCA Comments at 8-9; Texas AG Comments at 2; WorldCom Comments at 4-7; Genesis Reply at 1.

³⁴ BellSouth Comments at 6 n.2; SBC Comments at 6-8; Sprint Comments at 6-8, 9-10; Verizon Comments at 4-8.

³⁵ When a customer requests a PIC freeze from a LEC, the LEC blocks the customer's account from mechanized PIC changes submitted by IXCs. The PIC freeze customer must notify the LEC that it wishes to lift the PIC freeze before the LEC will process a PIC change for the customer's account.

³⁶ In the TPV process, the LEC connects the end user customer to an independent company to confirm the customer's request for a service change.

³⁷ BellSouth Comments at 6 n.2; NTCA Comments at 2-3; SBC Comments at 6-8; Sprint Comments at 6-8, 9-10; Verizon Comments at 4-8.

³⁸ WorldCom Comments at 5.

³⁹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Order, 18 FCC Rcd 10997, 10999, para. 5 (2003); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Fifth Order on Reconsideration, FCC 04-214, paras. 9-14 (rel. Nov. 24, 2004). Section 64.1190 of the Commission's rules sets out several options that LECs may use to verify the implementation and lifting of PIC freezes. 47 C.F.R. § 11.6900. TPV is listed as one of several options LECs may use to verify the implementation of PIC freezes, but TPV is not even listed as a method for verifying the lifting of a freeze. 47 C.F.R. § 64.1190 (d)(2)(iii) and (e).

⁴⁰ Verizon Supplemental Comments at Att. B, Exhibits Verizon East PIC Freeze Cost Workpaper 1.1, Verizon West PIC Freeze Cost Workpaper 1, Verizon East PIC Cost Workpaper 1.2, Verizon West PIC Cost Workpaper 1.2. (continued....)

voluntarily incurred costs may reduce customers' willingness to switch long distance providers, thereby hindering competition. Therefore, we find that incumbent LECs may not recover voluntarily-incurred TPV costs through the PIC change charge, and may recover mandatorily-incurred TPV costs only from customers that switch to the incumbent LECs' long distance affiliates.

14. Some commenters also argue that slamming costs should not be recovered through the PIC change charge.⁴¹ They contend that incumbent LECs have no legitimate role in investigating slamming complaints so there are no costs to be recovered.⁴² These commenters overlook the fact that customers may not be aware of the Commission's slamming complaint procedures and may contact the LECs for information about the process. Under the Commission's rules, if a customer notifies its LEC of an unauthorized change of its IXC, the LEC must notify both the authorized and the unauthorized IXCs, and must also refer the customer to the appropriate regulatory authority for resolution of the complaint.⁴³ Incumbent LECs do incur some small costs in carrying out these duties. In Verizon's cost study, for example, slamming inquiry costs represented only approximately \$0.09 per PIC change, or approximately two percent of the total costs included in Verizon's PIC change costs.⁴⁴ Because these costs are incurred legitimately by the LECs as part of implementation of customers' PIC selections; because, as represented by Verizon's cost study, these costs are slight; and because all customers benefit directly or indirectly from the LECs' diligence in investigating slamming complaints, we will allow incumbent LECs to spread these costs over all PIC change requests and recover them through the PIC change charge.

15. We also find that incumbent LECs may recover a reasonable percentage of their common costs through the PIC change charge. SBC and Verizon argue that common costs, such as legal, executive, marketing, and other costs, are not incurred in relation to any specific service, but are required for LECs to provide all of the services they offer, including the PIC change service.⁴⁵ Commenters have offered no justification for treating the PIC change service differently from other incumbent LEC services with respect to the inclusion of reasonable common costs.⁴⁶

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Verizon's TPV costs are found in its cost study at rows 1, 5 and 6 of Exhibit Verizon East PIC Freeze Cost Workpaper 1.1 and Exhibit Verizon West PIC Freeze Cost Workpaper 1.

⁴¹ ASCENT Comments at 8-13; NASUCA Comments at 8-9; WorldCom Comments at 5-6; AT&T Reply at 7; Genesis Reply at 8-10; WorldCom/CompTel Reply at 7-9.

⁴² ASCENT Comments at 8-13; NASUCA Comments at 8-9; WorldCom Comments at 5-6; AT&T Reply at 7; Genesis Reply at 8-10; WorldCom/CompTel Reply at 7-9.

⁴³ 47 C.F.R. § 54.1150 (a) and (b).

⁴⁴ According to Verizon's cost study, Verizon East's PIC costs, excluding PIC freeze costs, are \$4.75. Of this total cost, \$0.06, or approximately one percent of the total, are slamming costs. Verizon Supplemental Comments at Att. B, Exhibit Verizon East PIC Cost Workpaper 1.1 Rows 35 and 37. Verizon's cost study shows that Verizon West's PIC costs, excluding PIC freeze costs, are \$3.93. Of this total cost, \$0.14, or approximately four percent of the total, are slamming costs. Verizon Supplemental Comments at Att. B, Exhibit Verizon West PIC Cost Workpaper 1.1 Rows 26 and 28. Verizon's cost study shows that there were approximately 52 percent as many PIC changes in Verizon West as in Verizon East. Verizon Supplemental Comments at Att. B, Exhibit Verizon East PIC Cost Workpaper 2 Row 3 (8,196,979 total PIC changes in Verizon East) and Exhibit Verizon West PIC Cost Workpaper 2.1 Row 5 (4,268,280 total PIC changes in Verizon West). Using a weighted average, Verizon's total PIC costs, excluding PIC freeze costs, are approximately \$4.46. Of this total, approximately \$0.09, or two percent of the total, are slamming costs.

⁴⁵ SBC Comments at 6; Verizon Comments at 6.

⁴⁶ Genesis argues that inclusion of LEC common costs in the PIC change charge potentially could allow the incumbent LEC to recover from its competitors "win-back" marketing costs and costs from legal actions brought by its competitors. Genesis Reply at 8. The PIC change charge is not assessed on IXCs, but on the LECs' end user (continued....)

C. Establishing Safe Harbor Rates

16. To set the incumbent LEC electronic and manual PIC change charge safe harbors, we look to the cost information submitted in the record of this proceeding. There are three cost studies in the record: one filed by BellSouth in support of a change to its tariffed PIC change charge rate in November 2003;⁴⁷ one filed by Verizon in response to the *Further Notice* on June 15, 2004;⁴⁸ and one filed by SBC more than four months after the record closed, on November 4, 2004.⁴⁹ BellSouth's cost information was not promulgated in response to the issues raised in this proceeding, and it does not provide as much detail in certain areas, such as PIC freeze costs, as does Verizon's cost study. Verizon's cost study provides the most detailed analysis of the costs it includes in its PIC change charge, including costs associated with PIC freezes and the TPV process. Commenters objecting to Verizon's cost study focus on costs that should be excluded from the PIC change charge and do not contest the actual amounts of the costs. SBC's cost study was submitted after the record closed and parties have not had an opportunity to comment on it. Furthermore, SBC's cost study does not provide a detailed analysis of the costs attributable to electronically processed PIC changes.⁵⁰ We therefore rely on Verizon's cost study as the best record evidence to establish revised safe harbor rates.

17. After removing costs that Verizon identifies as associated with PIC freezes and TPV, we adopt a safe harbor rate of \$1.25 for electronically processed PIC changes⁵¹ and a safe harbor rate of \$5.50 for manually processed PIC changes.⁵² Verizon's cost study on which we base these safe harbor

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customers. IXCs are not required to reimburse this charge for customers that switch to their service. Any payment by an IXC of the PIC change charge is voluntary.

To the extent incumbent LECs seek to tariff PIC change charges greater than the safe harbor rates, they will be required to include in their cost support the percentage of common costs allocated to the PIC change charge. The Commission will then be able to examine the reasonableness of these allocations on a case-by-case basis. See, e.g., *Long-Term Number Portability Tariff Filings, Ameritech Operating Companies et. al*, CC Docket No. 99-158, Memorandum Opinion and Order, 14 FCC Rcd 11883, 11923-24, 11926-28, paras. 89, 95-100 (1999) (examining incumbent LECs' allocations of common costs in a tariff investigation proceeding).

⁴⁷ See BellSouth Transmittal No. 746; Letter from Jennette C. Fields, Tariff Administrator, BellSouth Telecommunications, Inc., to Secretary, Federal Communications Commission, F.C.C. Tariff No. 1 Application No. 140 (filed Nov. 3, 2003) (BellSouth Application No. 140); BellSouth Transmittal No. 756.

⁴⁸ Verizon Supplemental Comments at Att. B.

⁴⁹ SBC November 4 *Ex Parte* Letter.

⁵⁰ In an *ex parte* letter discussing its cost filing, SBC provides rate summaries showing costs for 100 percent manual and 100 percent mechanized PIC changes, but SBC does not provide any detail as to how it arrived at the costs for the mechanized PIC changes. Letter from Toni Acton, Associate Director, SBC Telecommunications, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 02-53, Att. (filed November 17, 2004) (SBC November 17 *Ex Parte* Letter).

⁵¹ The \$1.25 electronic safe harbor rate is based on the weighted average of Verizon East's electronic PIC change costs, minus PIC freeze costs (\$1.34), and Verizon West's electronic PIC change costs, minus PIC freeze costs (\$0.95). Verizon Supplemental Comments at Att. B, Exhibit Verizon East PIC Cost Workpaper 1.3 Rows 36, 38, and Verizon West PIC Cost Workpaper 1.3 Rows 27, 29. As discussed above, Verizon's cost study shows that there were approximately 52 percent as many PIC changes in Verizon West as in Verizon East. See note 44, *supra*. The weighted cost of Verizon's electronic PIC changes is approximately \$1.21, and we rounded this to \$1.25 to arrive at the electronic safe harbor rate.

⁵² The \$5.50 manual safe harbor rate is based on the weighted average of Verizon East's manual PIC change costs, minus PIC freeze costs (\$5.53) and Verizon West's manual PIC change costs, minus PIC freeze costs (\$5.37). Verizon Supplemental Comments at Att. B, Exhibit Verizon East PIC Cost Workpaper 1.2 Rows 36, 38, and Verizon West PIC Cost Workpaper 1.2 Rows 27, 29. As discussed above, Verizon's cost study shows that there (continued....)

rates includes in its electronically processed PIC change costs the costs associated with electronically submitted change requests that "fall out" of the electronic system and require some manual handling.⁵³ We therefore clarify that all PIC change requests that are submitted electronically by the IXC will result in the incumbent LEC charging the end user the electronic PIC change charge rate, regardless of whether some manual processing is required.⁵⁴

18. Incumbent LECs that process PIC change requests through electronic and manual methods must amend their tariffs to reflect separate rates for electronic and manual processing of PIC changes. If an incumbent LEC's rates are at or below these safe harbors, the incumbent LEC is not required to file cost support for the rates. If an incumbent LEC wishes to demonstrate costs in excess of the safe harbor rates, it must file detailed cost support for its proposed rates. If at the time it filed its currently tariffed PIC change charge rate an incumbent LEC relied on cost data demonstrating that its costs are lower than the new safe harbor rates, the incumbent LEC may not increase its PIC change charge rates unless it files new cost support justifying the higher rates.

19. BellSouth argues in this proceeding that the PIC change charge should be included in price cap regulation.⁵⁵ Commenters overwhelmingly oppose BellSouth's proposal.⁵⁶ Sprint argues that LECs should not be able to move PIC change charges, which are driven by end users' decisions to switch long distance providers, into price cap regulated access charges, which are assessed on IXCs.⁵⁷ We agree with Sprint, and find that incumbent LECs should not include PIC change charges in price cap regulation. We also reject Verizon's argument that any reduction in the PIC change charge would require price cap LECs to make an exogenous adjustment to their price cap rates.⁵⁸ Verizon's argument rests on the false premise that incumbent LECs are entitled to a certain amount of revenue based on the \$5.00 PIC change charge safe harbor.⁵⁹ The \$5.00 safe harbor is not a "prescribed rate" as Verizon contends.⁶⁰ The PIC change charge is based on the costs related to PIC changes. To the extent incumbent LECs' PIC change-related costs exceed the safe harbor rate, incumbent LECs have had the ability to file cost studies to justify a higher rate. And to the extent their costs were less than the safe harbor rate, as in the cases of SNET and BellSouth,⁶¹ these companies have reduced their PIC change charges accordingly. No

(...continued from previous page)

were approximately 52 percent as many PIC changes in Verizon West as in Verizon East. See note 44, *supra*. The weighted cost of Verizon's manual PIC changes is approximately \$5.48, and we rounded this to \$5.50 to arrive at the manual safe harbor rate.

⁵³ Verizon Supplemental Comments at Att. B, Exhibit Verizon East PIC Cost Workpaper 1.3 Row 2.

⁵⁴ The exception to this application of the electronic PIC change charge would be if the end user customer has implemented a PIC freeze on the account. In that case, the costs of the manual processing of the PIC change are not reflected in the electronic rate, and PIC freeze customers will be assessed the manual PIC change charge. The manual PIC change charge would be in addition to any PIC freeze implementation or removal costs that the LECs choose to recover from the end user for providing the service.

⁵⁵ BellSouth Comments at 3-4.

⁵⁶ AT&T Reply at 6-7; SBC Reply at 6; Sprint Reply at 5-7; WorldCom/CompTel Reply at 9-10.

⁵⁷ Sprint Reply at 5-7.

⁵⁸ Verizon Supplemental Comments at 9-10.

⁵⁹ Verizon Supplemental Comments at 10.

⁶⁰ Verizon Supplemental Comments at 10.

⁶¹ See Letter from Eugene J. Baldrate, Director-Federal Regulatory, Southern New England Telephone, to Secretary, Federal Communications Commission, Tariff F.C.C. No. 39 Transmittal No. 663, (filed Jan. 19, 1996) (SNET Transmittal No. 663) (setting a PIC change charge rate of \$2.60), BellSouth Transmittal No. 746, BellSouth Application No. 140, BellSouth Transmittal No. 756 (setting a PIC change charge rate of \$3.07).

exogenous adjustment to price caps was made by either company, as none was warranted under our rules. As in the case of the former \$5.00 safe harbor, we are not here prescribing rates for incumbent LEC PIC change charges in this proceeding.

20. In the *Further Notice* the Commission sought comment on whether the PIC change charge should be changed from an end user charge to a charge that is assessed on the IXCs if the IXCs submit the change request to the LECs.⁶² Commenters opposing this position argue that the end user causes the costs by deciding to change carriers and should therefore pay the charge.⁶³ We agree, and maintain the PIC change charge as an end user charge at this time. ACUTA argues that imposing the PIC change charge on IXCs could provide a disincentive for slamming.⁶⁴ Other commenters argue, however, that IXCs already may be paying customers' PIC change charges as a marketing tool to gain long distance customers,⁶⁵ assessing the charge on IXCs is not likely to have a significant deterrent effect for slamming.

D. Multiple PIC Change Charges for Simultaneous Changes in Services

21. Some commenters in the proceeding argue that LECs should not be able to assess multiple PIC change charges when customers change both their PIC and their intraLATA primary interexchange carrier (LPIC) at the same time.⁶⁶ Two incumbent LEC commenters confirm that, when the changes are requested simultaneously, the costs are equal to the costs of a single change.⁶⁷ Specifically, to avoid double recovery of costs, Sprint assesses only the interLATA PIC change charge when a customer changes both its PIC and LPIC simultaneously.⁶⁸ SBC splits the charge in half when the PIC and LPIC changes are requested at the same time, charging \$2.49 for each.⁶⁹ Generally, incumbent LECs' PIC change charges are contained in their federal tariffs and LPIC change charges are contained in state tariffs. For purposes of the federally-tariffed PIC change charge, when customers change their PICs in conjunction with changing their LPICs, incumbent LECs should assess half of the applicable federally-tariffed PIC change charge. Carriers may recover their remaining costs through the state-tariffed LPIC change charges. We require incumbent LECs to amend their federal tariffs to include a rate that is 50 percent of the manual PIC change charge rate, and another rate that is 50 percent of the electronic PIC change charge rate, and the respective 50 percent rate will apply when a customer requests a PIC change simultaneously with an LPIC change.

IV. CONCLUSION

22. As discussed above, we require all incumbent LECs that process PIC change requests through electronic and manual methods to revise their tariffs to include one rate for PIC changes that are processed electronically and a separate rate for PIC changes that are processed manually. Rates that are within the safe harbors of \$1.25 for electronically processed PIC changes and \$5.50 for manually processed PIC changes may be filed without separate cost support. Rates in excess of these safe harbors must include appropriately detailed cost support justifying the rates. Incumbent LECs must also revise

⁶² *Further Notice*, 19 FCC Rcd at 7447, para. 5.

⁶³ Cincinnati Bell Supplemental Comments at 2; Sprint Supplemental Comments at 3.

⁶⁴ ACUTA Supplemental Comments at 3.

⁶⁵ Beacon Comments at 3; MCI Supplemental Comments at 9; Verizon Supplemental Comments at 4 n. 2.

⁶⁶ NASUCA Comments at 7; WorldCom Comments at 6-7; NASUCA Reply at 11-12; NJ Ratepayer Advocate Supplemental Comments at 2.

⁶⁷ Sprint Comments at 13; SBC Supplemental Reply at 4.

⁶⁸ Sprint Comments at 13.

⁶⁹ SBC Supplemental Reply at 4.

their tariffs to reflect a rate that is equal to 50 percent of the full PIC change charge rate when a customer requests a PIC change in conjunction with an LPIC change. These tariff revisions are to be filed on or before the 30th day after this Report and Order is published in the Federal Register.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

23. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁷⁰

B. Congressional Review Act

24. The Commission will send a copy of this Report & Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act.⁷¹

C. Final Regulatory Flexibility Analysis

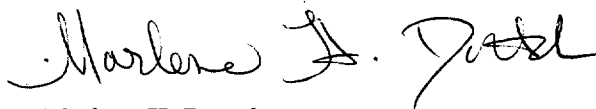
25. As required by the Regulatory Flexibility Act,⁷² the Final Regulatory Flexibility Analysis for this Report and Order is contained in Appendix B.

VI. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to 4(i), 4(j), 201(b), 203(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(a), 205, and 403, all incumbent LECs that process PIC change requests through electronic and manual methods SHALL FILE REVISED RATES, to include one rate for PIC changes that are processed electronically and a separate rate for PIC changes that are processed manually as described in paragraphs 7-18 above, and all incumbent LECs SHALL FILE REVISED RATES equal to 50 percent of the full PIC change charge rate when a customer requests a PIC change in conjunction with an LPIC change as described in paragraph 21 above, no later than thirty (30) calendar days from the publication of this Report and Order in the Federal Register. These rates SHALL BE EFFECTIVE on fifteen (15) days' notice.

27. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁷⁰ 44 U.S.C. § 3506(c)(4).

⁷¹ 5 U.S.C. § 801(a)(1)(A).

⁷² 5 U.S.C. § 604.

Appendix A

**PIC Change Charge Notice of Proposed Rulemaking
CC Docket No. 02-53**

Comments Filed by June 14, 2002:

ACUTA, Inc.: The Association for Telecommunications Professionals in Higher Education (ACUTA)
Association of Communications Enterprises (ASCENT)
AT&T Corp. (AT&T)
Beacon Telecommunications Advisors, LLC (Beacon)
BellSouth Corporation (BellSouth)
Cincinnati Bell Telephone Company (Cincinnati Bell)
Joseph Friedman
Hot Springs Telephone Company
National Association of State Utility Consumer Advocates (NASUCA)
National Exchange Carrier Association, Inc. and the Organization for the Promotion and Advancement of
Small Telecommunications Companies (NECA/OPASTCO)
National Telecommunications Cooperative Association (NTCA)
SBC Communications, Inc. (SBC)
Sprint Corporation (Sprint)
Office of the Attorney General of the State of Texas (Texas AG)
Verizon
WorldCom

Reply Comments Filed by July 1, 2002:

AT&T
BellSouth
Vicera Communications, Inc. d/b/a Genesis Communications International (Genesis)
NASUCA
SBC
Sprint
Verizon
WorldCom/CompTel

Supplemental Comments Filed by June 15, 2004:

ACUTA
AT&T
BellSouth
Cincinnati Bell
MCI
NASUCA
National Exchange Carrier Association *et al.* (NECA)
New Jersey Division of the Ratepayer Advocate
SBC
Sprint
Verizon

Supplemental Reply Comments Filed by June 25, 2004:

AT&T
BellSouth
MCI
NASUCA
NECA
SBC
Verizon

Appendix B

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice* and the *Further Notice*.² The Commission sought written public comment on the proposals in the *Notice* and *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

Need for, and Objectives of, the Report and Order

Presubscribed interexchange carrier (PIC) change charges are federally tariffed charges imposed by local exchange carriers (LECs) on end user subscribers when these subscribers change their presubscribed interexchange carriers (IXCs). The Commission in 1984 established a safe harbor of \$5 for PIC change charges of incumbent LECs, allowing carriers to set rates at or below the \$5 safe harbor without the need for filing detailed cost support for the rates. Significant industry and market changes have occurred since the implementation of the \$5 safe harbor in 1984; therefore, the Commission initiated this proceeding to reexamine the existing safe harbor for incumbent LEC PIC change charges. As discussed in paragraphs 6-18 of the report and order, incumbent LECs are required to adopt separate PIC change charges for changes that are processed electronically and manually. We adopt a safe harbor of \$1.25 for electronically processed PIC changes, and a safe harbor of \$5.50 for manually processed PIC changes. Also as discussed in paragraph 21, incumbent LECs must include in their federal tariffs a rate equal to 50 percent of the full PIC change charge rate when a customer requests a PIC change in conjunction with a change in its intraLATA presubscribed interexchange carrier (LPIC).

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A "small business concern" is one that: 1)

¹ 5 U.S.C. § 603.

² *Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, CCB/CPD File No. 01-12, RM-10131, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568, 5578-82, paras. 22-34 (2002) (*Notice*); *Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445, 7449-7453, paras. 13-24 (2004) (*Further Notice*).

³ 5 U.S.C. § 604.

⁴ 5 U.S.C. § 604(a)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity (continued....)"

is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷

We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁸ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁹ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁰ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹¹ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.¹² Thus, under this size standard, the majority of firms can be considered small.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange carriers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹³ According to Commission data, 1,310 carriers reported that they were incumbent local exchange service providers.¹⁴ Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.¹⁵ Consequently, the Commission estimates that most incumbent local exchange carriers are small entities that may be affected by the rules and policies adopted herein.

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for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁷ 15 U.S.C. § 632.

⁸ 15 U.S.C. § 632.

⁹ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁰ 13 C.F.R. § 121.201, NAICS code 517110.

¹¹ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued October 2000) (NAICS code 513310 was changed to 517110 in October 2002).

¹² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹³ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁴ *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Table 5.3 (May 2004) (*Trends in Telephone Service*).

¹⁵ *Trends in Telephone Service*, Table 5.3.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

All incumbent LECs, including those that are small entities, are now required to make revisions to their federal tariffs to implement our revised PIC change charge policies. To the extent their federal tariffs do not already reflect this, all incumbent LECs must file rates equal to 50 percent of the full PIC change charge rate when an end user customer requests a PIC change in conjunction with an LPIC change. Also, all incumbent LEC that are able to process PIC changes electronically must file separate rates for PIC changes that are processed manually and electronically. If the rates are within the safe harbor rates of \$5.50 for manually processed changes and \$1.25 for electronically processed changes, no cost support is required. For rates in excess of the safe harbor rates, incumbent LECs must file detailed cost information justifying the higher rates.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; 2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; 3) the use of performance rather than design standards; and 4) an exemption from coverage of the rule, or any part thereof, for small entities."¹⁶

Some commenters in this proceeding argue that incumbent LECs should be required to base their PIC change charges on their individual costs. As discussed in paragraph 6 of the report and order, we reject this approach as unduly burdensome on incumbent LECs, including any that may be small entities. Instead, adopting safe harbors for PIC change charges allows incumbent LECs to file rates without the burden of filing detailed cost support. Incumbent LECs still have the option of filing cost support if their PIC change costs exceed the safe harbor rates. As discussed in paragraphs 9-10 of the report and order, we decline to adopt a separate safe harbor rate for small and rural incumbent LECs. We note that prior to our decision in this order small and rural carriers have been subject to the same \$5.00 safe harbor applicable to all other carriers. No small or rural carrier has submitted cost information seeking to increase this \$5.00 charge. As has been the case since 1984, all carriers remain free to submit cost studies to justify a higher rate to the extent these companies' costs exceed the safe harbors. As discussed in paragraph 10, we do not require any small or rural carrier to implement electronic PIC change processing systems if doing so would not be economically rational.

Report to Congress

The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁷ In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁸

¹⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

¹⁷ 5 U.S.C. § 801(a)(1)(A).

¹⁸ 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

RE: In the Matter of Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligation on All Local and Interexchange Carriers, CG Docket No. 02-386.

RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278.

RE: Presubscribed Interexchange Carrier Charges, CC Docket No. 02-53.

The three items the Commission adopts today continue our efforts to place consumers at the forefront of the Commission's agenda. Specifically, we take action to strengthen the Commission's telemarketing rules, which were amended in 2003. This continues the work begun in 2003 with the establishment of a national do-not-call registry and other consumer protection measures concerning telemarketing calls. The do-not-call registry now contains over 80 million telephone numbers and continues to serve as an option to protect consumers from unwanted telemarketing calls.

Moreover, the rules we adopt today help to ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. Facilitating the exchange of customer account information in certain situations will assist all carriers in resolving billing issues and moving customers seamlessly from one carrier to another. I am pleased that the Commission has endorsed a proposal that has garnered the support of a broad cross-section of the industry. These standards will create greater industry uniformity without imposing unnecessary burdens on carriers.

Finally, we revise the Commission's policies governing charges associated with a consumer's choice to change long distance providers. The current \$5 safe harbor rate was implemented in 1984, and industry and market conditions have changed dramatically since that time. Moreover, the record in this proceeding clearly demonstrates a large disparity between the costs of PIC change charges that are processed electronically versus those that are processed manually. As a result, based on cost data filed in the record, we set a separate safe harbor rate for electronically and manually processed PIC changes -- \$ 1.25 and \$5.50, respectively. Carriers that have invested in the technology to process and submit PIC changes electronically should be rewarded by offering potential customers a lower PIC change rate reflecting the lower costs of electronic processing. Adopting a two-tiered approach provides an incentive for providers offering long distance service to invest in electronic processing capabilities to gain the competitive advantage of lower PIC change charges for customers switching to these services.

I am pleased to support these three interrelated items. They represent the Commission's commitment to protecting individuals throughout the life-cycle of consumer choice -- from the decision to change providers, to the costs associated with that choice, to a decision to prevent unwanted telemarketing calls.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, DISSENTING IN PART**

Re: *Presubscribed Interexchange Carrier Charges*, Report and Order (CC Docket No. 02-53)

The Commission's \$5 safe harbor for PIC change charges has been on our books for two decades. The \$5 charge is a relic from the early days of divestiture. So I welcome the opportunity this proceeding affords to bring the PIC change charge into the modern era of telecommunications. This is especially important because these charges can end up on consumer bills whenever end users switch long distance providers.

But I think today's decision may miss the mark. While the Order lowers the mechanized threshold to \$1.25, it raises the manual threshold to \$5.50. To figure out if this is good or bad for consumers, it is important to determine how many changes are processed mechanically and how many are processed manually. Yet we don't analyze this thoroughly in today's decision. There is record evidence seeming to show that while as few as 21% of PIC changes are mechanized, as many as 79% are manual.¹ This means that while the benefit of a lower PIC change charge is enjoyed by a few, the burden of a higher charge could be imposed on the many. And no amount of discussion about net benefits or changed incentives can mask the fact that this Order could subject the majority of end-users to increased charges. As a result, I support today's item and our effort to reduce charges for mechanized changes, but respectfully dissent from its conclusions with respect to manual charges.

¹ See Letter from Mary L. Henze, Assistant Vice President, BellSouth D.C., Inc., Attachment at 3 (filed February 1, 2005); see also Letter from Richard T. Ellis, Executive Director, Verizon (filed February 8, 2005); Letter from Toni Acton, Associate Director, SBC Services Inc., Attachment (filed February 7, 2005).

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Presubscribed Interexchange Carrier Charges, CC Docket 02-53.

With this Order, the Commission revisits the charge that consumers must pay to switch their long distance provider. The current charge was established over twenty years ago, so consumer groups and long distance carriers who bear these charges have fairly asked us to find out whether the costs incurred still justify the current rate. When we refreshed the record in this proceeding last spring, my goal was to pass on the savings of twenty years of technological innovation to consumers. Despite some reservations, I am hopeful that this Order will accomplish that goal.

Unlike our former rules which applied one safe harbor rate, this Order establishes two rates for changes to a consumer's long distance carrier (also known as the presubscribed interexchange carrier or "PIC"): one rate for electronic transactions, and another for manual transactions. That first rate, for electronic transactions, is reduced in this Order – as you might expect from twenty years of technological innovation. Unfortunately, the other rate, for manual changes, goes up. The theory of this approach is that consumers and long distance carriers will have incentives to choose the lower cost option.

I do have some concern that the bulk of consumers, today, use the more expensive manual process – and that the rates may go up for these consumers in the short run. Without perfect information about how this new incentive-based system will work, it is imperative that the Commission test its theory that rates will eventually go down for all consumers by re-evaluating these new rules in a reasonable period of time. We can't wait another 20 years to look at this again.

For these reasons, I concur in this item.